

interaction protocol further comprises maintaining a history of recorded scripts played.

91. (Original) The computer readable medium of claim 76, wherein executing an interaction protocol further comprises deciding on intervention.

92. (Original) The computer readable medium of claim 91, wherein deciding on intervention is done by the human agent.

93. (Original) The computer readable medium of claim 92, wherein deciding on intervention further comprises selecting between options including at least a live-voice response and a recorded response.

94. (Original) The computer readable medium of claim 93, wherein deciding on intervention further comprises determining to provide a live-voice response.

95. (Original) The computer readable medium of claim 93, wherein deciding on intervention further comprises determining to provide a recorded response.

REMARKS

The Office Action mailed July 19, 2004 has been received and reviewed. Claims 1-95 are in the case. Of these claims, claims 39-75 have been withdrawn by prior election. Claims 1-4

and 8-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker (6,216,111) in view of Noble, Jr. (6,356,634). Claims 5, 7, 22-27, 29-38, 76-80, and 82-95 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Noble, Jr. and further in view of Rogers et al. (5,946,386). Claims 6, 28, and 81 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Noble, Jr., Rogers and further in view of Miner et al. (5,652,789).

For the reasons set forth below, claims 1-38 and 76-95 are believed to be in condition for allowance. Applicant respectfully requests favorable reconsideration of the application in view of the following remarks.

Rejection of Claims 1-38 and 76-95 Under 35 U.S.C. §103(a)

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP §2142).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. References must expressly or impliedly suggest that claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Id.*

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

Applicant respectfully submits that under these required tenets, and in view of the following arguments, Examiner has not established a prima facie case for obviousness.

Rejection of Claims 1-4 and 8-21 Under 35 U.S.C. §103(a)

Claims 1-4 and 8-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Noble, Jr. The Examiner states that it is obvious that Walker suggests the limitation of having an agent select scripts because Walker teaches more flexible and effective tailoring of sales presentations. Applicant respectfully disagrees. Walker does not teach flexible and effective tailoring of sales presentation. Walker references flexible and effective tailoring of a sales presentations in the Summary of the Invention by suggesting that the invention may have as an advantage "more flexible and effective tailoring of both the presentation and rewards to the interests of the customer. . ." Col. 3, lines 42-50. However, Col. 9, lines 5-9, however, Walker states that "[T]he method and system of the present invention are flexible, with both the information and the reward being adaptable based on customer feedback to solicit the optimum

interest and attention of the customer. The flexibility and adaptability is because of customer feedback to the canned computer driven presentation. Nowhere is it taught or suggested that the flexibility and adaptability are because of how the script is presented. In fact, Walker teaches away from adding agent-selected scripts.

Applicant submits that there is no suggestion or motivation to combine the Walker and Noble references, as is required by MPEP § 2143.01. The Federal Circuit Court stated in *In re Denis Rouffet, Yannick Tanguy and Frederic Berthault*, 149 F.3d 1350 (Fed. Cir. 1998) that when determining the patentability of a claimed invention which combines two known elements, the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Id.* The Court reiterated its prior statements that,

"virtually all [inventions] are combinations of old elements." *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 U.S.P.Q. (BNA) 865, 870 (Fed. Cir. 1983); see also *Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 U.S.P.Q. (BNA) 8, 12 (Fed. Cir. 1983). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." *Sensonic, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 U.S.P.Q.2D (BNA) 1551, 1554 (Fed. Cir. 1996).

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of

obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.

There are no reasons to combine the prior art references in the manner claimed by Applicant.

Referring to Applicant's claim 1, the Examiner states that Walker does not teach "a recorded script selected by the agent." Applicant submits that this is because the purpose of the Walker patent is simply to provide incentives to a customer for listening to a sales presentation and confirm that the customer listened. See Walker Col.2, lines 56-62. The computer presents a canned presentation mingled with questions that a customer answers by depressing keys on their telephone. See Walker Col.4, line 56-59; Col. 5, lines 37-39; Col. 5, lines 63-67; Col. 6, lines 16-19; Col. 6, lines 56-59; Col. 7, lines 57-59. The consumer know that it will be given money credits for each answer that the consumer gets right. Thus, in theory, the customer is more likely to listen.

It is important to note that the entire process of Walker is controlled by the computer. There are no agent determinations. The CPU executes the program (Col. 5, lines 29-30), the CPU determines the sales presentation to be played (Col. 5, lines 45-46), the CPU controls the interactive voice response unit (Col. 5, lines 31-34), the CPU presents questions (Col. 5, lines 55-61), the CPU determines whether the customer gave the right answer (Col. 5, lines 65-67), and the CPU rewards right answers (Col. 6, lines 1-6). With the CPU controlling the entire process, and the customer providing inputs keypad, the intent of Walker is clearly to obviate the need for

human interaction.

In fact, only one embodiment in the Walker patent discloses human involvement of any kind. In Column 8, lines 1-5, an agent may speak with the customer. But in this embodiment, the agent is signaled when to speak, and the agent is not allowed to make determinations regarding script content. Again, Walker illustrates its purpose of minimizing agent involvement. Thus, there is no motivation or suggestion to add to Walker the option of having agents select scripts to play.

Additionally, if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Walker is about computer control. Everything is controlled by the CPU. Walker is about automation. To add the element of an agent being able to determine script selection flies in the face of clear underlying purposes of Walker. If an agent is selecting scripts on the fly, the computer is no longer in complete control of the presentation and *computer* verification of the listening process must yield to *human* verification. This presumes that the agent is monitoring the conversation. However, Walker does teaches away from this concept. In Walker, there is no human monitoring of the script. In the only embodiment that involves humans, the computer signals the agent when to speak, (Col. 8, lines 1-5) the agent is not monitoring the conversation and can not unilaterally chime in by selecting a script to play.

Further, MPEP § 2141.02 requires that ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the

invention and the prior art references as a whole. Walker, as a whole, is about verification and incentives for listening. In contrast, Applicant's invention is about transparency. There is no teaching whatsoever in Walker about transparency. To the contrary, the customer in Walker knows in advance that it will be given a canned presentation. In fact, the customer initiates the call to hear the canned presentation in exchange for the provided incentive. The customer knows it is to give a response via a keypad and not by voice to a live person. There is no attempt in Walker to have the customer believe it is talking at all times to a live agent. In contrast, Applicant's "invention allows the transparent interleaving of live voice and prerecorded script by the agent." See page 13, lines 13 and 14. Figures 5 and 6, and the detailed description related thereto, highlight how "the agent determines to play scripted questions 190" and how "the agent may interject with an interjection statement 192 such as "yes," "no," "uh huh," laughter, and the like." See page 18, lines 17-18 and page 19, lines 6-7. "The user may also select a scripted ending statement 194 such as "thanks for purchasing our product," or a description of the product selected by the contact." See page 19, lines 7-9. Applicant's invention discloses a system "configured to allow the agent or user to selectively provide prerecorded waveforms in the form of scripted dialog." See page 19, lines 9-11.

Likewise, Walker, on the whole, is nothing like Noble. The purpose of Noble is to provide consistent voice quality and delivery of scripts. In Noble, the software provides for an agent to record their voice and view the entire script being played. Walker teaches minimizing agent involvement.

Nothing in Walker suggests any motivation to remove the fully automated, mistake-free,

script presentation process from the CPU and place content decisions in the hands of telemarketing agents who traditionally are disinterested temporary labor getting paid minimum wage. Especially since there is absolutely no need for it, given the verification purposes of the Walker invention to play a presentation and receive only electronic inputs from the customer. Accordingly, Applicant submits that it is not obvious to combine the Walker and Noble references in rejection of Applicant's claims and Claim 1 should be allowed.

With respect to claims 2-4 and 8-21 generally, claims that are dependant on an allowable base claim are generally allowable. As presented hereinabove, Applicant asserts that claim 1 is not rendered obvious by the prior art of record, specifically Walker in view of Noble. Thus, claims 2-4 and 8-21 are allowable for at least the reason that they are dependant on an allowable base claim.

Generally, regarding claim 2, Walker does not teach executing an interaction protocol by one a human agent and a computer script. Walker teaches complete control of the interaction by the CPU. In Walker,

[T]he CPU 205 executes a program stored in the ROM 204, using information temporarily stored in the RAM 203. The CPU controls the [Interactive Voice Response Unit] IVRU 201 and causes information to be retrieved from the storage device 210, stored in the RAM 203, and updated in the various databases The CPU selects the most appropriate sales presentation script . . . The sales presentation script is played to the customer through the IVRU.

The Examiner cites to Col. 8, lines 1-5, however, nowhere in this citation does a human agent execute an interaction protocol.

Regarding claims 3 and 4, Walker does not teach recorded data for generating a "human-

sounding" waveform. Col. 8, lines 28-32 reference only an audio telephone message without regard to how it sounds. Likewise, Col. 7, lines 10-13 do not reference any form of audio recordings.

Regarding claim 12, Walker does not teach maintaining a history of recorded scripts. Col. 5, lines 48-50 merely reference the selection of sales scripts to be played. Walker makes no mention of recording a history of scripts that have been played.

Regarding claims 14-17, the Walker patent does not disclose the interleaving of responses from a human agent and a recorded script selected by the agent. In Column 8, lines 3 and 4, the Walker patent mentions that "the central controller signals a live agent to speak with the customer." The agent does not make any decision regarding the switch from machine presentation to script. Thus, he does not select when or how agent responses (either live voice or recorded) are interleaved to form an overall conversational sales presentation. Further, in none of Examiner's citations does it reference the agent listening, selecting or presenting content, or deciding upon intervention.

Regarding claims 18-21, the agent makes no decision to intervene into the prerecorded content. Walker clearly teaches the agent is signaled when to speak. Any decision is taken out of the agent's hands, consistent with Walkers approach to obviate the need for, or minimize, human involvement. Walker does not teach that an agent can decide to intervene, whether by providing a live-voice response or a recorded response.

Examiner gives no reason to combine Walker with Noble to render claims 2-4 and 8-21 obvious.

Accordingly, reconsideration of claims 2-4 and 8-21 is therefore respectfully requested.

Rejection of Claims 5, 7, 22-27, 29-38, 76-80, and 82-95 Under 35 U.S.C. §103(a)

Claims 5, 7, 22-27, 29-38, 76-80, and 82-95 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Rogers et al. (US 5,946,386).

As presented hereinabove, Walker in view of Noble render claim 1 of Applicant's invention obvious. Accordingly, claim 5 and 7, which depend from claim 1 are not obvious in view of Walker and Noble. Applicant respectfully submits that the addition of Rogers does not render claims 5 and 7 obvious because the combination of the references does not teach or suggest all the claim limitations of claims 5 and 7. Claim 5 references recorded scripts that are voice waveforms created independently from the human agent. Walker teaches away from using human agents and does not teach "voice waveforms created independently from the human agent." Applicant disagrees with Examiner's claim that Rogers teaches voice waveforms created independently from the human agent. Examiner cites Rogers Col. 36, lines 12-17 and Col. 34 lines 56-57 in support of finding that the VIP rules.

The purpose, in Applicant's claims, of having the script in a voice wave form created independently from the human agent is to allow the use of a select number of professional voice actors to create the recorded scripts for use by thousands of agents without having to record the voices of thousands of agents. With the hardware and software disclosed in Applicant's application, voice created independently from the agent can be used for the primary sales presentation and the agent's own voice can be used to provide appropriate interjections and the

customer will not be able to tell the difference between the two, or that the customer is really interacting with a computer.

The Rogers patent does not teach anything about the creation of voice waveforms, whether by a voice actor, or by a human. Rodgers teaches the use of a call management system which transfers call control to a user workstation, thereby providing improved capabilities for the use without the limitations of telephone systems. Rogers allows for specific call handling options when a VIP call is detected. However, this option does not address the creation of a voice waveform to be played that is independent from the agent's voice. The Examiner asserts that the VIP rules of Rogers are scripts. However, VIP Rules are specifically defined in Rogers as specific rules "created to specify special handling for important callers, sets of callers or even for all callers. These VIP rules precede and augment direct user controls" VIP rules are not scripts, but handling protocols. Rogers does not teach nor suggest the creation of voice waveforms. Further, Noble teaches away from voice waveforms independently from the human agent. Noble teaches a way for the human agent to record their own voice.

Accordingly, Claim is not rendered obvious by the combination of Walker, Noble, and Rogers.

Regarding Claim 22, as stated above, the combination of Walker, Noble and Rogers does not teach the limitation of Applicant's claim 22, nor is there any suggestion to combine these references. The Examiner states that Walker does not teach voice waveforms created independently from the human agent. Noble teaches the exact opposite of this and thus the teachings of Walker and Noble conflict on this point and there is not suggestion to combine these

references. Rogers does not teach waveform creation at all and does not, in combination with Walker or Noble suggest that it would be obvious to combine these references in order to achieve the limitations of Applicant's claim 22. For the reasons stated above, Applicant requests reconsideration of claim 22.

With respect to claims 22-27 and 29-38 generally, claims that are dependant on an allowable base claim are generally allowable. As presented hereinabove, Applicant asserts that claim 22 is not rendered obvious by the prior art of record, specifically Walker in view of Noble and Rogers. Thus, claims 22-27 and 29-38 are allowable for at least the reason that they are dependant on an allowable base claim. The Examiner provides no other support for not allowing these claims and Applicant respectfully requests reconsideration of claims 22-27 and 29-38.

Regarding claim 76, the arguments presented above with respect to claims 1 and 22 support a finding of nonobviousness. Selective interleaving by an agent of scripts and voice waveforms created independently from the human agent is not taught by Walker, Noble, or Rogers individually. Additionally, the combination of Walker, Noble, and Rogers not suggested by any of these references in order to render Applicant's claim 76 obvious.

The arguments in support of nonobviousness of the dependent claims outlined above are also applicable to support a finding of nonobviousness in regard to claims 77-80 and 82-95. Examiner does not provide other assertions or citations in support of an obviousness finding on other grounds and Applicant therefor requests reconsideration of claims 76-80 and 82-95.

Rejection of Claims 6, 28, and 81 Under 35 U.S.C. §103(a)

Claims 6, 28, and 81 stand rejected under 35 U.S.C. §103(a) as being unpatentable over

Walker in view of Rogers and further in view of Miner et al. (US 5,652,789). Examiner points out that Walker does not teach "an audio track of a voice response recorded by a voice actor. Noble teaches voice recordings in the voice of the agent, not a voice actor. Rogers does not teach voice recordings at all. As discussed above, none of these references suggests voice recordings by voice actors. As discussed above, to establish a prima facie case of obviousness, there must be a motivation or suggestion to combine references before obviousness can be found based on the combination. Miner fails to add or suggest the modification of anything in Walker, Noble, or Rogers to get to Applicant's claims 6, 28 and 81. Miner does not teach anything regarding the audio track of a voice response to be played to the customer that are not created by the agent himself. Miner teaches electronic assistants to handle certain aspects of calls and then transfer the call to the intended live recipient. The electronic assistant in Miner does not attempt to appear as a live agent. In fact, in Miner, the electronic assistant announces to the caller, "I'm the electronic assistant for John Smith." Neither Walker, Rodgers, nor Miner, requires the masking of a prerecorded script presentation to appear as a live voice conversation with a customer. Thus, there is no need nor suggestion to create human-sounding waveforms or recordings in any of these patents. There is also no need nor suggestion to use recorded voice actors as opposed to computer-generated sounds that approximate human voice. Likewise, because neither Walker, Rodgers, nor Miner teaches a method or apparatus for making a human agents live voice sound like a voice recorded independently from the agent, there is no suggestion in these patents to have voice waveforms created independently from the human agent.

Additionally, Miner is non analogous art. In order to relay on a reference as a basis for an

obviousness rejection, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. MPEP § 2141.01(a). The Miner reference is neither. As mentioned, Miner deals with electronic personal assistants for communicating across various different media. Applicant's field of endeavor is telemarketing. Applicant's problem was the issue of avoiding the quick consumer disconnect when the consumer realizes he or she is conversing with a machine. Applicant's invention involves transparency, and way in which scripts are presented, intermingled with live voice, to achieve the allusion of a live caller with the benefits of prerecorded scripts. Miner teaches a device that announces itself as an electronic assistant. The exactly the opposite of what would help the Applicant's concerns. Accordingly, Miner is not analogous and Claims 6, 28, and 81 should be allowed.

Thus, Applicant's invention is not rendered obvious by any combination of Walker, Noble, Rogers, or Miner and Applicant respectfully requests reconsideration of claims 1-38 and 76-95 in light of the amendment and remarks above.

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 30th day of September, 2005.

Respectfully submitted,



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